

EXECUTIVE MESSAGE

Was received, and laid before the Senate:

Executive Office, April 2, 1897.

To the Senate: Senate bill No. 55 is herewith returned without approval. The bill seeks to amend articles 641 and 642 of the Revised Statutes, providing for the creation of private corporations. In the main it is a re-enactment of these articles, adding only a few purposes of incorporation, yet in other respects it materially amends the present law. Several provisions of the bill impress me as of questionable expediency and wisdom, but only one will be considered.

Under the existing statute regulating the formation of private corporations (section 37, article 642, Revised Statutes), they may be formed to act as trustees, assignees or receivers when appointed by any firm, corporation or court, and to do a general fiduciary and depository business; to act as sureties and guarantors of the fidelity of employes, trustees, executors, administrators, guardians, *public officials*, and others appointed to or assuming the performance of any duty or trust, *public or private*, under appointment by any court or tribunal or under contracts between private individuals or corporations; on any bond required in judicial proceedings, and to act as executors or testamentary guardians; *provided*, that when any bond of an executor, administrator or guardian, or any bond in judicial proceedings, or any bond required to be filed by any *public official* is signed by a corporation organized under the statute, deemed good security, such bond may be accepted by the proper officer without other security.

It is provided in the same section, for obvious reasons, that fidelity and guaranty companies organized under it shall at all times keep on deposit with the Secretary of State not less than \$50,000 in available cash assets, and that this amount be kept intact at all times.

Guaranty and fidelity corporations are regulated by chapter 16 of title 21 of the Revised Statutes. By article 733 of that chapter it is provided that "Hereafter any corporation organized or created under the laws of this State, or of any other State or territory, or of any municipality of such State or territory, or of any foreign

government, sovereignty or municipality, for the purpose of issuing surety, guaranty or indemnity bonds, guaranteeing the fidelity of persons in private offices, employments or positions of trust and contracts, or for acting as security on any such bonds, shall file with the Commissioner of Agriculture, Insurance, Statistics and History a certified copy of its articles of incorporation and all amendments thereto."

By succeeding articles it is provided that such companies shall, before transacting business, file with the Commissioner of Insurance a statement of their assets and liabilities, their net capital stock and of what it consists, that they shall not transact business in this State unless possessed of at least \$100,000 actual capital stock, and that they shall deposit with the State Treasurer money or bonds or other securities, to be approved by the Commissioner of Insurance, to the amount of \$25,000, or shall produce satisfactory proof that such corporations own real estate in this State of the value of \$25,000.

A comparison of section 37 of article 642 with chapter 16 shows that while the former permits the organization of corporations guaranteeing *official bonds*, the latter has no application whatever to such companies. The latter applies only to foreign and domestic corporations created "for the purpose of issuing surety, guaranty or indemnity bonds guaranteeing the fidelity of persons in *private offices*, employments or positions of trust and contracts or for acting as security on such bonds." The requirement of chapter 16, that fidelity and guaranty corporations shall have an actual capital stock of at least \$100,000, and keep with the State Treasurer money or approved security amounting to \$25,000, does not govern corporate sureties, whether foreign or domestic, on official bonds. There is no law of this State which expressly authorizes such companies, organized elsewhere, to transact business here, and such companies created by the laws of this State are not required to procure a certificate of authority from the Commissioner of Insurance. The only protection against the default of corporations that become sureties on official bonds organized under the laws of this State is the deposit of \$50,000, required by section 37 of article 642, and this is repealed by the bill under consideration.

Official bonds aggregating probably a million dollars are required to be given in this State biennially, and if the policy of allowing corporations to become sureties on them shall prevail, existing safeguards should be preserved and others devised and adopted.

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